



Don't sink Paris: Legal basis for inclusion of aviation and shipping emissions in Paris targets

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Summary

There is some unwarranted confusion as to whether all shipping and aviation emissions are within the scope of the Paris Agreement. Many argue that the Paris Agreement articulates “economy-wide absolute emission reduction”, which clearly encompasses these sectors as vital parts of national economies. Others believe that these sectors are not subject to Paris because they are not specifically mentioned. To clear up the question, T&E has commissioned legal advice on the position of these sectors in the Agreement.

The legal analysis finds that the Paris Agreement has fundamental differences from the Kyoto Protocol, with the effect that these sectors are clearly subject to the obligations of the Paris Agreement and must be included in Parties' Nationally Determined Contributions (NDCs). Unlike Kyoto, the central pillar of the Paris Agreement is a temperature goal. Parties are obligated to implement “economy-wide absolute emission reduction targets”, that is, to control anthropogenic emissions so that global warming is limited to well below 2°C and preferably stays within the limit of 1.5°C. A failure to address all anthropogenic emissions - including shipping and aviation - would violate the central aim of the Agreement.

But while the Paris Agreement is clear in this regard, related guidance documents have not fully integrated the new, temperature-based approach. In light of this legal clarification, three actions must be taken:

1. States should **revise their NDCs** to take into account all their shipping and aviation emissions;
2. **Amend or clarify paragraph 53 of decision 18/CMA** so that emissions from international aviation and shipping bunker fuel emissions are reported within (not separately from) national totals in NDCs;
3. **Update the [2006 IPCC Reporting Guidance](#)** to include all aviation and shipping emissions as part of all other national emissions totals.

This legal analysis should decisively dispel the dangerous misconception that international aviation and shipping emissions are not subject to Parties' obligations under the Paris Agreement. This is relevant in the context of international organisations (International Maritime Organization, IMO or the International Civil Aviation Organization, ICAO) and agreements (offsetting schemes such as the

Carbon Offsetting and Reduction Scheme for International Aviation, CORSIA): it is the obligation of Parties themselves to ensure these emissions are tackled and they cannot discharge this obligation to international organisations.

1. Introduction

The UNFCCC treaty addresses climate change internationally. Its ultimate objective is to achieve ‘stabilization of greenhouse gas concentrations in the atmosphere’. The Kyoto Protocol operationalised this treaty and focused on specific emissions reduction targets for developed nations, but stipulated that Parties should work through IMO and ICAO to address international aviation and shipping emissions. The Paris Agreement, succeeding the Kyoto Protocol, takes a different approach: it imposes a long-term global temperature goal rather than a sector-specific approach in order to limit the catastrophic effects of climate change. From a legal point of view, this change is important, as a temperature goal requires inclusion of all anthropogenic emissions.

2. Nationally Determined Contributions (NDCs)

The Paris Agreement obliges Parties to “prepare, communicate and maintain successive nationally determined contributions”. These plans, known as NDCs, must serve the central aim of the Paris Agreement, namely limiting global temperature increase, and so must take action on all emissions that affect climate, given that all anthropogenic emissions contribute to the rise in global temperature. Indeed, the Paris Agreement stipulates that Parties should undertake “economy-wide absolute emission reduction targets” to this end. All aviation and shipping emissions are deeply integrated into countries’ economies, so clearly fall within this definition of emissions. Equally, there is no definition of “economy-wide” that excludes international shipping and aviation and there are no other relevant treaty obligations that exclude international aviation and shipping emissions from the obligations imposed by the Paris Agreement. Finally, if left unabated emissions from these sectors will undermine the Parties’ ability to achieve the Paris Agreement’s central temperature goal. Therefore, to comply with the obligations of the Paris Agreement, parties must address aviation and shipping emissions in their NDCs.

Currently, Decision 18/CMA of the Paris Agreement Rulebook states “international aviation and marine bunker fuel emissions should be reported as two separate entries and should not include such emissions in national totals but report them distinctly”. In light of the above, this article (18/CMA) is a misstep in operationalisation of the Paris Agreement, as it brings into the Paris Agreement’s framework an approach which is contrary to the language and intent of the Agreement. This article must therefore be corrected.

The Paris Agreement requires that Parties account for emissions in accordance with common metrics assessed by the International Panel on Climate Change (IPCC). The relevant IPCC Guidance document dates from 2006 (and was refined, rather than revised, in 2019). In these guidelines, international aviation and shipping emissions are advised to be reported separately from other emissions. However, these Guidelines are not in line with the new approach of the Paris Agreement, or even in line with the IPCC’s own position: in its Special 1.5 °C Report, the IPCC argued that the economy-wide targets required to move away from a 2 °C pathway to a 1.5 °C pathway should include accounting for all aviation emissions.¹

¹ <https://www.ipcc.ch/sr15/chapter/chapter-2/> Section 2.5.1

While the IPCC guidance does not prevent Parties from including all aviation and shipping emissions in their NDCs - meaning that states should already include these emissions in their national totals - the IPCC Guidance should also be updated in light of the new, temperature based approach (and its own advice in the Special 1.5° C Report).

While a limited number of parties currently include all aviation and shipping emissions within their NDCs, there are clear precedents for standard approaches to including these emissions. The European Commission has recently proposed extending its Emissions Trading System (ETS) to 50% of shipping emissions from voyages between EEA and non-EEA ports.² In its explanation, the Commission notes “this approach has been noted as a practical way to solve the issue of Common but Differentiated Responsibilities and Capabilities, which has been a longstanding challenge in the UNFCCC context.” This approach could therefore form the basis of a definitive framework for including shipping emissions in NDCs while respecting CBDR-RC principles. The European Union already includes outgoing aviation emissions in its NDC. The UK has recently included international transport emissions in its carbon budget,³ demonstrating that states are realising their legal responsibilities in regards to these emissions.

Nonetheless, even if there is uncertainty in the way in which international aviation and shipping emissions should be reported to avoid double counting, the precautionary principle - as laid out in UNFCCC Article 3(3) - dictates that this is not a reason to exclude them from NDCs. As such, **it is imperative that states include all shipping and aviation emissions as a first step, while simultaneously working to correct IPCC and Paris Rulebook guidance.**

3. The Role of IMO and ICAO

A further, important change from the Kyoto Protocol to the Paris Agreement is the role of the international bodies: the Paris Agreement does not explicitly provide a role for the IMO or ICAO in addressing the international aviation and shipping sectors. Indeed, while drafting the Paris Agreement text, Parties explicitly removed text that would have required parties to work through the ICAO or IMO in tackling these emissions. As a result, no state should discharge responsibility for monitoring or controlling their shipping and aviation emissions to these international organisations.

4. Conclusions and recommendations

The legal evidence is clear: Parties must report all emissions from shipping and aviation in their NDCs. Considering the temperature goal of the Paris Agreement and its implications for economy-wide emissions reductions, guidance within the Paris Rulebook and from the IPCC should be updated.

Planes and ships can't escape Paris climate commitments. Their emissions must be included in emissions targets and NDCs as this is essential to meeting the temperature goal of the Paris Agreement. There is no legal basis for excluding them.

² https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3541

³ <https://www.transportenvironment.org/press/uk-closes-loop-hole-plane-and-ship-emissions-carbon-budget>

Further information

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